IN THE HIGH COURT OF BOMBAY AT GOA

MISC. CIVIL APPLICATION NO. 884 OF 2006.

Competent Automobiles
Company Limited, F-14, Competent House,
Connaught Place,
Middle Circle,
New Delhi – 110 001,
Through Shri Amit Gupta,
Chartered Accountant. .... Applicant

Versus

Panchayat of Candolim
and Others. .... Respondents.

Mr. Mukul Rohatgi, Senior Advocate with Mr. Dhruv Mehta and Mr. Sudin Usgaonkar, Advocates for the Applicant.

Mrs. N. Alvares, Advocate for the Original Petitioner/Respondent.

Mr. S.S. Kantak, Advocate General with Ms. G. Bhonsule, Addl. Government Advocate for the Original Respondents No.3 and 4.

Mr. E.P. Badrinarayanan, Central Government Standing Counsel for the Original Respondent No.5.

Mr. M.S. Sonak, Advocate for the Original Intervenor.

CORAM: S. A. BOBDE, &
N. A. BRITTO, JJ.

DATE: 13th MARCH, 2007.

ORAL ORDER: (PER S.A. BOBDE, J.)

On 13th October, 2006 a Division Bench of this Court gave certain directions to the respondent-authorities, inter alia, to conduct a survey and inquiry as regards the number of dwelling units and all other structures and constructions which were existing as on 19th February, 1991 in the CRZ-III zone in Goa, village or

townswise ; to identify all types of structures and constructions made in CRZ-III zone, and further to identify such constructions which are made in excess of double the dwelling units. While giving these directions, what is relevant in this application is that this Court further directed that identification be done of open plots in CRZ-III zone which are available for construction of hotels and to frame appropriate policy/regulation for utilization before they are allowed to be utilized for such construction activities; and further directed that till such survey and inquiry is completed, no license for any type of license for any type of construction in CRZ-III zone be issued or granted and no new structure of whatsoever nature be allowed to be be granted in the CRZ-III zone.

2. The Applicant who intends to develop an open plot in its possession and construct a hotel thereon in the CRZ-III zone has applied to this Court, inter alia, for a review of the aforesaid directions for a survey and identification of open plots for construction of a hotel and the direction which bars it from making any application for construction of hotel, pending the survey directed by this Court.

The directions of this Court in the said Judgment which come in the way of the Applicant are (D) and (E) which read as follows :-

> "(D) To identify the open plots in CRZ-III zone which are available for construction of hotels and to frame appropriate policy/regulation for utilization thereof before they are being allowed to be utilized for such construction activities.
>
> (E) Till and until the survey and inquiry is completed, as directed above, no new license for any type of

> construction in CRZ-III zone shall be issued or granted, and no new structure of whatsoever nature shall be allowed to be constructed in CRZ-III zone, except repairs and renovation of the existing houses which shall be subject to the appropriate order on completion and result of the survey and inquiry to be held as directed above and this should be specifically stated in the licenses to be granted for the purpose of repairs and/ or renovation of the existing houses. "

The Applicant was not a party to the petition in which this Court rendered the Judgment dated 13th October, 2006. It therefore applied to the Supreme Court of India for permission to prefer a Special Leave petition against the said Judgment. On 4.12.06 their Lordships passed the following Order :-

> " At this stage, we are not inclined to considered the prayer for permission to file the special leave petition. We will keep this matter pending. In the meantime, the petitioner is permitted to approach the High Court. Liberty is given to mention the matter before this Court later, if need be. "

In pursuance of the liberty, the Applicant has moved the present application.

2A. These directions were made at the instance of the Petitioner in Writ Petition No. 422/1998 i.e. The Goa Foundation, hereinafter referred to as the Petitioner.

3. Mr. Rohatgi, the learned counsel for the applicant submitted that the Petitioner had moved this Court for relief only in respect of the unauthorized construction of dwelling units and not in respect of unauthorized constructions in respect of hotels and therefore the directions at (D) and (E) reproduced above are beyond the scope of the petition and need to be recalled in the interest of justice.

4. In order to appreciate the contention, it is necessary to advert to the CRZ Notification in question. The relevant clause of the Coastal Area Clarification and Development Regulations are in Clause 6(1), CRZ-III. The provisions in regard to construction is as follows :-

No-Development: In CRZ-III is the area upto 200 metres from the High Tide Line is a 'No-Development Zone' vide clause (i).

Hotels/Beach Resorts: All the vacant plots may be developed between 200 and 500 metres from the High Tide Line with prior approval of the Ministry of Environment and Forests (MEF) for construction of hotels/beach resorts for temporary occupation of tourists subject to the conditions as stipulated in the guidelines at Annexure-II vide clause (ii).

Dwelling Units: Construction/reconstruction of dwelling units between 200 and 500 metres of the High Tide Line is permitted, so long it is within the ambit of traditional rights and customary uses such as area meant for dwelling units that is presumably existing villages and gaothans. The construction of hotels is regulated by Clause (ii) and the construction of dwelling units by Clause (iii).

5. The petitioner's contention i.e. of the Goa Foundation before this Court was primarily that there are gross violations of clause (iii) in relation to construction/reconstruction of dwelling units between 200 and 500 metres of the High Tide Line. According to the petitioner, inter alia, the condition that the total number of dwelling units shall not be more than twice the number of units etc. have been violated. The petitioner also pointed out several other violations which are not set out in detail in this order. Primarily, the petitioner thus referred to violation of clause (iii). The prayer clause in the petition were likewise, mainly in relation to clause (iii). The petitioner . The petitioner sought orders restraining the respondents from granting new permission for residential units in the CRZ of Calangute except in accordance with clause (iii) and for a direction to remove all construction in violation of the said clause. The petitioner also sought other directions to restrain the respondent from approving other residential construction in CRZ-III of the rest of the coastal villages in Goa, except in accordance with clauses (ii) and (iii).

Sub-Clauses (ii) and (iii) which regulate the construction of hotels and dwelling units respectively, in respect of which the petitioner sought relief read as follows :-

> " (ii) Development of vacant plot between 200 and 500 metres of High Tide Line in designated area of CRZ-III with prior approval of Ministry of Environment and Forests (MEF) permitted or construction of hotels/beach resorts for temporary occupation of tourists/visitors subject to the conditions as stipulated in the guidelines at Annexure-II.

(iii) Construction/reconstruction of dwelling units between 200 and 500 metres of the High Tide Line permitted so long it is within the ambit of traditional rights and customary uses such as existing fishing villages and gaothans. Building permission for such construction/reconstruction will be subject to the conditions that the total number of dwelling units shall not be more than twice the number of existing units; total covered area on all floors shall not exceed 33 percent of the plot size; the overall height of construction shall not exceed 9 metres and construction shall not be more than 2 floors ground floor plus one floor. Construction is allowed for permissible activities under the notification including facilities essential for such activities. An authority designated by State Government/Union Territory Administration may permit construction of public rain shelters, community toilets, water supply, drainage, sewerage, roads and bridges. The said authority may also permit construction of schools and dispensaries, for local inhabitants of the area, for those panchayats the major part of which falls within CRZ if no other area is available for construction of such facilities. "

6. While deciding this petition, this Court noticed the contention of the petitioner several facts pertaining to the alleged illegal construction. This Court noticed certain

constructions which were meant to be for dwelling units were being used for the purpose of hotels. The Court noticed that some people have been allowed to construct shops, hotel rooms, etc. in the village of Candolim. The Court considered the phenomenon of hotels in the village areas. In paragraph 20 the Court observed as follows :-

> " 20. Going through the records placed before this court in relation to the various constructions carried out after 19th February, 1991, particularly in the village of Candolim, it is apparent that in some cases, same person has been allowed to construct more than one unit when in fact some people have been allowed to construct shops, hotel rooms, etc. Permitting the construction of hotels or beach resorts in terms of the clause (ii) in the vacant plots within the said area is totally different from allowing the construction of hotel rooms and shops within the area which is required to be utilized for the construction of dwelling units. Certainly, construction of hotels and beach resorts would not be permissible within the locality wherein there exist the dwelling units. Hotel construction would be permissible only in the vacant plots situated within the said zone. The provision in that regard is very clear under clause (ii), as also disapproval for such construction under the clause (iii) of the said CRZ Notification. Obviously, the respondent/authorities seem to have granted permission in disregard to the provisions comprises under the said Notification and in particular the clause (iii) thereof. The permissions appear to have been granted indiscriminately for all types of development in the

> area which is essentially meant only for all types of development in the area which is essentially meant only for construction or reconstruction of the dwelling units in accordance with the provisions of law comprised under the clause (iii) of the said CRZ Notification. Certainly, this is a clear violation of the CRZ Notification by the authorities, and therefore, would require necessary directions in that regard. "

7. This Court thus unequivocally observed that construction of hotels and beach resorts would not be permissible within the locality where there exist dwelling units. It appears to have been the view of this Court that the vacant land on which hotels can be built cannot be vacant lands within the area meant for dwelling units, that is to say the villages and gaothans , vide Clause (iii) above.

8. In order to give effect to the view, it was therefore necessary to identify all the open plots in the CRZ zone which were available for construction of hotels long with other types of construction and structures made in the CRZ-III zone. The Court, therefore, directed a survey to be conducted and concluded within a period of six months and in any case by 30th May, 2007. In order to preserve the status quo the Court directed that until survey and inquiry is completed, no new licenses for any type of construction in the CRZ zone shall be issued or granted vide direction (E). It is in this context that the embargo came to be placed on permissions for construction of hotels. Thus even though the learned counsel for the applicant may be correct in submitting that the permission to construct a hotel on a vacant land is treated differently from the permission to construct a dwelling unit in an existing village, in the context of this case it was felt necessary for the Court to make observations regarding where a hotel can be constructed and that it cannot be in an area where there are

dwelling units, that is presumably the villages. It is in this context that the aforesaid observations appear to have been made.

9. Undoubtedly, even according to the applicant, this Court has power under Article 226 to grant relief in terms wider than those strictly prayed for in the petition. In this case it appears that the relief has not been granted wider than that prayed for since the Court has made observations regarding where hotels can be constructed by holding that they cannot be constructed in a village. Thus while deciding upon the validity of the constructions under Sub-Clause (iii) which deals with construction of dwelling units within traditional rights such as existing fishing villages and gaothans, this Court was of the view that construction of hotels would not be permissible when there exist fishing villages. This is still an adjudication of what can be permitted to be constructed under Sub-Clause (iii) which was the primary focus of the Writ Petition.

10. We are, therefore, of view that there is no merit in the contention that the Judgment of this Court suffers from a mistake or error of law, apparent on the face of record and which falls for review of the Judgment and recall of certain directions given at (D) and (E).

11. At this juncture, it may be noted that it would not be appropriate to grant the Applicant liberty to apply for permission to construct the hotel in view of the fact that the survey would be completed in about two months from now, that is, by May, 2007, as directed by this Court. The Applicant has declined an offer from this Court that it may apply for permission to construct the hotel, subject to the directions at (D) and (E) above and subject to the fate of these directions in the petition and Special Leave

Petition, they have sought to prefer before the Supreme Court of India.

12. In view of the above, we reject the Misc. Civil Application No. 884/2006.

S. A. BOBDE, J.

N. A. BRITTO, J.

sl.